

unlawful and should not be permitted, and 4) that MWAA be enjoined from providing telecommunications service at Dulles, from ousting GTE as the local exchange carrier at Dulles, and from otherwise interfering with GTE's provision of such services at Dulles. In support of its Petition, GTE further states as follows:

JURISDICTION

1. GTE brings this action pursuant to Va. Code Sections 56-1, et seq., and the Commission's Rules of Practice and Procedure.

PARTIES

2. GTE is a public service corporation under Va. Code Sec. 56-1 providing local exchange telephone service and other services to customers at Dulles (including MWAA) and the surrounding community as well as to other exchanges in various locations in the Commonwealth of Virginia and other states. It holds a certificate of public convenience and necessity ("CPCN") issued under Va. Code Sec. 56-265 authorizing it to furnish telecommunications service in its Virginia exchanges, including its Dulles exchange.¹ Such certificate is a "property right" that is entitled to protection of the courts. Town of Culpeper v. Virginia Electric and Power Co., 215 Va. 189, 207 S.E.2d 864, 867-68 (1974). Its business address is 8149 Walnut Grove Rd., P.O. Box 900, Mechanicsville, VA 23111.

3. MWAA is a body corporate and politic created by an

¹ Va. Code Sec. 56-265.3 provides in part that:

No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service.

interstate compact between the Commonwealth of Virginia and the District of Columbia to operate and maintain Washington National Airport and Dulles International Airport.² It is a public utility under Va. Code Sec. 56-265.1 in that it owns and operates telecommunications facilities at Dulles and the surrounding community for the furnishing of telephone service.³ On information and belief it does not hold a CPCN from the Commission. Its business address is: 44 Canal Center Plaza, Alexandria, VA 22314-1562.

FACTUAL BACKGROUND

4. In the early 1960's at the time Dulles was built, GTE constructed its central office at the Airport and provided telecommunications facilities from there throughout the Airport and the adjacent community where numerous residents were expected to build structures on the land surrounding Dulles. Over the years, GTE has continued to maintain and upgrade its telecommunications facilities there in order to provide Dulles and the adjacent community high-quality telephone service.⁴ The GTE central office switching equipment is still located in a building on the Airport

² 49 U.S.C. App. Sec. 2421, et seq.

³ Va. Code Sec. 56-265.1 provides in part:

"Public Utility" means any company which owns or operates facilities within the Commonwealth of Virginia for ... the furnishing of telephone service

⁴ GTE has constructed over 37 miles of copper outside plant facilities and buried over 8 miles of fiber optic cable throughout the Dulles exchange. It has invested over \$7.5 million in its telecommunications infrastructure there.

grounds ("Building 8"). Since 1962 when the Airport commenced operations, GTE has continuously provided telecommunications services to the Airport and the surrounding community.

5. GTE's central office located in Building 8 is currently providing service for 350 access lines serving MWAA, 3,800 access lines serving commercial facilities located on MWAA-leased property but outside the airport proper, and 250 access lines to residential and commercial customers located beyond MWAA-leased property.⁵

6. For more than a year now, MWAA and GTE have been engaged in negotiations resulting from MWAA's demand that GTE remove itself as the certified local exchange telephone service provider for most of the service territory at Dulles and the surrounding community. MWAA has hired a contractor to manage the construction and operation of its own telecommunications facilities and services and initially requested that GTE transfer its advanced fiber optic and other outside plant at Dulles and the surrounding community to MWAA at no charge. In subsequent negotiations, MWAA offered to pay a minimal amount while insisting that it had the exclusive right to provide telecommunications services not only to its own facilities but to all commercial activities in the Dulles exchange. During the last round of negotiations, MWAA offered to allow GTE to use the existing GTE facilities but stated that GTE would not be allowed to operate, maintain, repair or construct any facilities at

⁵ The size of the Dulles exchange is similar in size to other exchanges such as Bluefield, King William, Independent Hill, Bridgewater or Bowling Green.

Dulles or the surrounding community as it has done in the past.⁶ MWAA advised GTE that if GTE would not sell MWAA its facilities, it would file with the FCC to have the facilities declared "inside wire" and take control of them by law.

7. In its negotiations with GTE, MWAA has declared that the "demarcation point" between GTE and the facilities of virtually all customers in the Dulles exchange be at one of MWAA's buildings (Building 8) to which GTE's network "feeder" cable to its Dulles exchange would terminate.⁷ In essence, GTE's local exchange facilities would only be allowed to travel from its intrastate network outside the exchange to a single point located in GTE's central office within the Dulles exchange. Once so terminated, GTE would not be permitted to freely operate its facilities beyond that point. All of the exchange network from GTE's central office to GTE customers located in the exchange would be operated and controlled by MWAA.⁸

⁶ See attached Exhibit 1.

⁷ See attached Exhibit 1. This is also the building in which MWAA is constructing its own central office.

⁸ Essentially, MWAA proposes to interpose itself between GTE's customers as a "bottleneck" through whose sole facilities GTE must now use to reach its customers. This would apply not only to GTE but to any competitive local exchange service provider who applies for a CPCN to serve the Dulles exchange after January, 1996. It is fairly transparent that MWAA intends to establish itself as an unregulated monopoly provider of local exchange service at Dulles before competitive local exchange service begins and then restrict access to Dulles customers through its exclusive local exchange network. In negotiations, MWAA has indicated that if GTE wished to serve a new "tenant" customer directly, as is the customer's right under the Commission's STS Rules, See 3:3 Va. Regs. Reg 328,329 Sec. 8 (Nov. 10, 1986), the customer would be required to either build

8. MWAA has indicated that it has established an "innovative contractual arrangement for providing telecommunications services" at Dulles and throughout the whole 17-square-mile community.⁹ MWAA characterizes its proposed local exchange service to the approximately 4,000 customers there as a "shared-tenant service," although it has not registered as a shared-tenant service ("STS") provider, nor does the area encompassed by its service or the description of the service fit the established criteria of STS.¹⁰ All of GTE's customers at Dulles and the surrounding community would be forced to use facilities owned or maintained by MWAA, presumably at the fees set by MWAA and beyond the jurisdiction of the Commission. This proposed service would include not only those GTE customers in airport buildings owned by MWAA, but also GTE customers in other buildings MWAA does not own which are located throughout the 17-square-mile community.

9. MWAA has filed a petition with the FCC to have the outside plant in GTE's Dulles exchange declared to be "inside wire" controlled by MWAA, thereby attempting to remove the Commission's jurisdiction over the telephone service in that exchange.¹¹ By

its own facilities to the single demarcation point MWAA established or pay MWAA (or its subcontractor) to construct facilities to that point. The expected charge for such a Dulles customer would be well over \$20,000. MWAA would also presumably extract a right-of-way fee from a customer who used its own facilities.

⁹ See attached Exhibit 2 at p.3.

¹⁰ See, e.g., 3:3 Va. Regs. Reg 328 Sec. 1,5 (Nov. 10. 1986).

¹¹ See attached Exhibit 2.

claiming to be a shared-tenant service provider, it would evade the Commission review of its rates and practices required of local exchange service providers. If successful in this scheme, MWAA would oust GTE as the regulated local exchange service provider and become the monopoly service provider but without regulatory oversight.

MWAA'S ATTEMPT TO ACQUIRE GTE'S SERVICE TERRITORY

10. GTE is required to "furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same." Va. Code Sec. 56-234. Consistent with this service obligation and the company's significant investment in facilities¹², the Virginia Code provides that a telephone utility's CPCN that allows and requires it to serve its customers cannot be nullified by a private or public entity, in whole or in part, without the Commission's review and approval. Va. Code Sec. 56-265.4. Expropriation of GTE's outside plant facilities and the expulsion of GTE as the local exchange service provider are in direct violation of Va. Code Sec. 56-265.4.

11. Va. Code Sec. 56-265.4:4 forbids the granting of a CPCN to another public utility to serve in an existing certificated area:

No certificate shall be granted to an applicant proposing to furnish local exchange telephone service in the territory of another certificate holder unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is

¹² See note 4, supra.

inadequate to the requirements of the public necessity and convenience.¹³

Moreover, if the Commission finds the incumbent utility's service to be inadequate, that utility "shall be given a reasonable time and opportunity to remedy such inadequacy ..." before a certificate may be granted to a new provider. Id. This statutory protection of the utility's CPNC and the customer's rights to adequate service reflects the importance placed on this relationship. There has been no claim or showing by MWAA that the services provided by GTE to its customers are inadequate nor has any action been filed with this Commission to that effect.¹⁴

12. MWAA has not applied under Va. Code Sec. 56-265.4 to the Commission for a CPCN to operate in GTE's Dulles service territory.¹⁵ Instead, it attempts to accomplish the same result by applying to the FCC for an order that would declare most of the Dulles exchange its exclusive service territory yet beyond Commission oversight.¹⁶ In its FCC Request, MWAA brazenly argues

¹³ Va. Code Sec. 56-1 defines "local exchange telephone service" as:

Telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service

¹⁴ In fact, GTE has been advised by its customers that they still prefer GTE services when told by MWAA that they would not be able to have them once MWAA's network is installed.

¹⁵ If MWAA desires to provide non-exclusive local exchange service in the Dulles exchange, the law allows for an application to so serve after January 1, 1996.

¹⁶ See attached Exhibit 2.

that the whole 17-square-mile Dulles exchange is a single "premise," which would mean under FCC rulings that GTE's local exchange facilities in the Dulles exchange would be "inside wire" belonging to MWAA.¹⁷ If GTE's outside plant at Dulles is declared to be "inside wire" or "premise wire," and as a result is deregulated by the FCC, MWAA could then argue that such facilities are no longer network facilities regulated by the Commission. MWAA would be free to provide local exchange service to the Dulles exchange without Commission oversight, charging the "captive customers" of that exchange whatever rates it desires, maintaining or not maintaining whatever service levels and standards it chooses to provide.

13. That this is MWAA's scheme is evident from the Comments it filed in the Commission's rulemaking Case No. PUC950018 to implement Va. Code Sec. 56-265.4:6.3. MWAA advocated the resale of local exchange service but insisted that no rules be established to regulate STS. It argued for no STS regulation in spite of the fact that all of its stated "public interest" telecommunications goals would be achieved if STS providers were regulated as competitive service providers. The purpose for its position is transparent. As a reseller, an STS provider would provide all local exchange services in competition with competitive local exchange carriers, yet it would not be subject to Commission oversight. It would be given special protection from competition without any regulation.

¹⁷ See, e.g., attached Exhibit 2 at pp. 2-6 and attached Exhibit 1 at p. 3.

As an STS provider with captive "tenants," MWAA would be the exclusive¹⁸ provider of local service as a reseller but not be subject to the same standards for competitive local exchange providers under Va. Code Sec. 56-265.4:4. The inference is MWAA wants to become an unregulated monopolist of local exchange services.

MWAA'S SHARED-TENANT PROPOSAL

14. MWAA's Request for Declaratory Ruling before the FCC sets out its shared-tenant service proposal in some detail.¹⁹ The critical portion of MWAA's proposal is its request to have the FCC move GTE's demarcation points from the individual buildings of GTE's customers throughout the Dulles exchange to a single "demarcation point" in MWAA's central office. MWAA would declare the whole exchange a "common development" under Section 1 of the

¹⁸ See Note 8, supra. As an STS provider, no local exchange carrier would be able to serve MWAA's "tenants" directly. In order to reach these customers, local exchange carriers would be required to terminate their outside plant facilities at the single demarcation point MWAA has selected for all of its "tenants". Under current Commission STS Rules, the "tenant" customers would be required to build outside plant facilities to reach the other local exchange carrier's facilities at MWAA's central office or pay MWAA to build them. When faced with the tens of thousands of dollars necessary to build outside plant facilities to MWAA's central office, few "tenants" would pay the "penalty" to select another carrier.

¹⁹ See attached Exhibit 2 at p. 3. It is further evident from the description of the STS service on p. 3 of this filing that the STS MWAA would provide is clearly not STS. In fact, MWAA does not even initially call it STS in its filing. It states it has contracted with Harris to provide "telecommunications services" to "occupants" of the airport and surrounding community who will be charged for the cost to build the network. The purpose of the new network, it states, is merely to replace GTE's network.

Commission's STS Rules²⁰ and resell GTE's local service throughout the exchange under the guise of STS.

15. STS was authorized to permit a limited resale offering to business customers in a building or to a small group of interconnected buildings. It was never intended to apply to a large geographic area containing numerous and diverse telecommunications customers such as those existing at the Dulles exchange. Dulles is a medium-sized exchange when the surrounding 17-square-mile community of buildings and other structures is included.²¹ While Dulles does contain an airport, which qualifies under existing rules for STS by itself,²² the fact that an airport is in the Dulles exchange does not mean STS extends beyond the airport terminal and associated buildings. Section 5 of the Commission's STS Rules states that STS "shall not be offered to the general public" However, this is exactly what MWAA proposes to do. MWAA's service will be offered to essentially anyone who is located in the Dulles exchange. In short, MWAA intends to use the STS tariff to operate as a local exchange carrier. This proposed

²⁰ Section 1(b) of the rule provides in part that STS may be provided to customers "that are within specifically identified buildings or facilities that are within specifically identified contiguous property areas and are ... within a common development" 3:3 Va. Regs. Reg 328 Sec. 1 (Nov 10, 1986).

²¹ See Footnote 5, supra.

²² Section 1 of the Commission's STS Rules does list "airports" as a "common development." The Dulles exchange, however, is much more than just an "airport." It includes hotels, car rental companies, office buildings, toll booths, and much more. The 17 square miles and approximately 4,000 customers is a good-sized telephone exchange. 3:3 Va. Regs. Reg 328 Sec. 1 (Nov. 11, 1986).

use of GTE's STS tariff is well beyond the letter and spirit of what was intended when STS was created by the Commission and should not be allowed.

INTERFERENCE WITH GTE'S LOCAL EXCHANGE SERVICE

16. MWAA has notified GTE that it has taken over GTE's local exchange facilities throughout the Dulles exchange.²³ As a result, GTE will no longer be able to operate or maintain its facilities as it believes necessary to meet the service standards and obligations which the Commission requires. MWAA's control over the local exchange network means that GTE cannot repair its facilities according to Commission standards necessary to maintain service levels and cannot modernize or improve its facilities to provide new or expanded telecommunications services. GTE will also be required to rely on MWAA, which has no CPCN nor any experience as a local exchange telephone service provider, to operate and maintain the system. GTE must be permitted to provide local exchange service to its Dulles exchange and to directly serve its customers through its own facilities.

COMMISSION REVIEW OF CONNECTION ARRANGEMENTS

17. Finally, the construction of telecommunications facilities by MWAA and its proposal to provide service in GTE's Dulles exchange raise a number of issues over the interconnection arrangements and the physical connection between the lines of both companies. Va. Code Sec. 56-482 provides in part that:

Upon demand of either party thereto, or any

²³ See attached Exhibit 1.

person affected thereby, all ... arrangements whatever between two or more telephone companies doing business in this Commonwealth, affecting ... the physical connection between the lines of such companies, shall be submitted to the Commission for inspection insofar as they may affect the efficiency of the public service and the ability of the respective companies to best serve the public and be subject to its approval.

By this Petition, GTE also seeks the Commission's review of MWAA's physical connections between its lines and GTE's lines. GTE submits that MWAA's proposal to establish a single demarcation point in one building and prohibit GTE from operating its facilities in its Dulles exchange is contrary to the public interest and the law.

WHEREFORE, GTE petitions the Commission to specifically:

(a) Declare that MWAA's proposal to provide telecommunications service in the Dulles exchange is local exchange telephone service subject to the Commission's jurisdiction and control.

(b) Declare that MWAA must obtain a CPCN before it may offer such service.

(c) Declare that MWAA's proposal to offer STS is contrary to Commission STS rules and the law and is not STS service.

(d) Declare that under current Commission regulations, MWAA may not replace GTE as the exclusive local exchange carrier in the Dulles exchange.

(e) Enjoin MWAA from providing STS service or any other telecommunication service.

(f) Enjoin MWAA from interfering with GTE's provision of local exchange service.

(g) Enjoin MWAA from moving GTE's customers' demarcation point to MWAA's central office at Dulles.

(h) Enjoin MWAA from refusing to allow GTE to operate its local exchange facilities and equipment in the Dulles exchange.

Respectfully submitted,

Dated: September 1, 1995

by

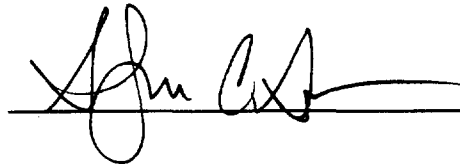

Counsel

Richard D. Gary
Hunton & Williams
Riverfront Plaza - East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 778-8330

A. Randall Vogelzang
Joe W. Foster
GTE South Incorporated
4100 Roxboro Road
Durham, North Carolina 27702
(919) 317-5160

CERTIFICATE OF SERVICE

This 7th day of September, 1995, I served by hand-delivery or first-class United States mail a copy of the foregoing Petition for Declaratory Judgment and Injunctive Relief on the Honorable Naomi C. Klaus, 44 Canal Center Plaza, Alexandria, VA 22314 and the Honorable Ian D. Volner, 1201 New York Ave., N.W., Suite 1000, Washington, D.C. 20005-3917.

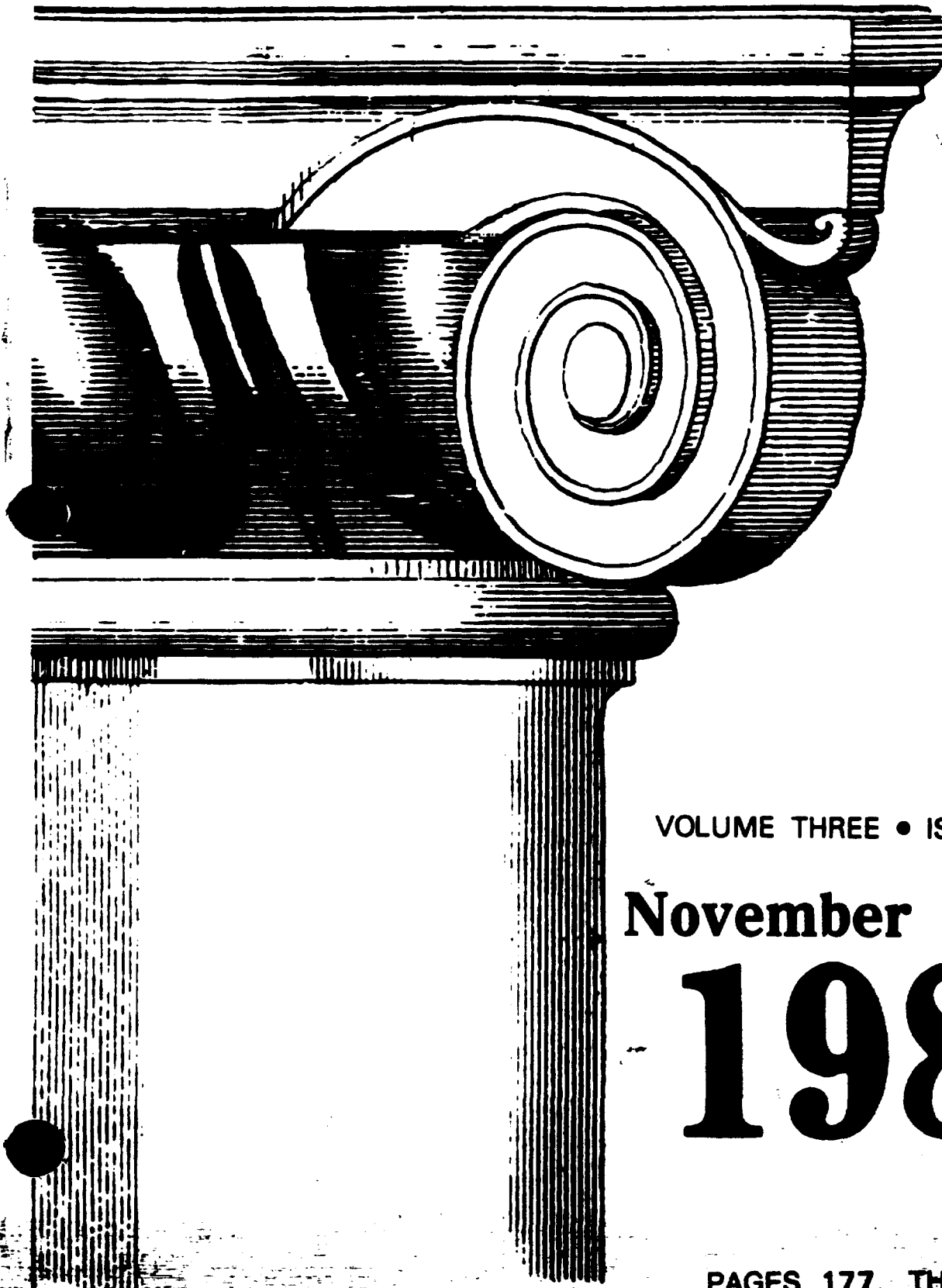




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THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME THREE • ISSUE THREE

November 10, 1986

1986

PAGES 177 THROUGH 358

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 7, 1986

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC850036

Ex Parte: Investigation of
Private Resale or Shared Use
of Local Exchange Services.

FINAL ORDER

On September 15, 1986, the Commission entered an order in this docket that cancelled the oral argument that had been scheduled for September 16. The order provided that any party desiring oral argument must file a request that it be rescheduled on or before September 30, 1986. Because no request has been filed, the Commission concludes that oral argument is neither desired nor necessary.

The hearing scheduled September 16, 1986 at 10:30 a.m. was convened by a Commission Hearing Examiner solely for the purpose of receiving comments from any public witness desiring to address the rules. No public witnesses appeared.

Since no public witnesses appeared to speak against the proposed rules for shared tenant service, the comments filed by the parties were generally supportive of the rules, and no party sought oral argument in opposition to the proposed rules, the Commission has concluded that the rules proposed in our order of July 11, 1986, should be adopted to become effective as of the date of this order. Accordingly,

IT IS THEREFORE ORDERED that the Rules Governing Sharing or Resale of Local Exchange Service (Shared Tenant Services) set forth in Attachment A hereto are adopted effective as of the date of this order.

ATTESTED COPIES hereof shall be sent by the Clerk of the Commission to the parties shown on the service list attached hereto as Attachment B; to the local exchange telephone companies of the State of Virginia as shown on the service list attached hereto as Attachment C; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 8th Floor, Richmond, Virginia 23219; and to the Commission's Divisions of Communications, Accounting and Finance and Economic Research and Development.

/s/ George W. Bryant, Jr., Clerk

ATTACHMENT A

RULES GOVERNING SHARING OR RESALE OF LOCAL EXCHANGE SERVICE (SHARED TENANT SERVICE)

- § 1. The tariffs of Virginia local exchange companies shall not prohibit any persons from subscribing to local exchange business telecommunications service and facilities and privately reoffering those communication services and facilities to persons or entities occupying buildings or facilities that are within specifically identified contiguous property areas (even if the contiguous area is intersected by public thoroughfares or rights-of-way) and are either (a) under common ownership, which is either the same owners, common general partners, or common principal equity investors or (b) within a common development which is either an office or commercial complex, a shopping center, an apartment or condominium or cooperative complex, an airport, a hotel or motel, a college or university, or a complex consisting of mixed uses of the types heretofore described, but not to include residential subdivisions consisting of single-family detached dwellings. Such private reoffering shall hereinafter be referred to as "shared tenant service."
- § 2. To the extent that a shared tenant service system would not meet the requirements of Rule 1 of these Rules, the person or persons desiring to provide the shared tenant service system shall have the right to petition the Commission to obtain a waiver of that Rule. Notice of this petition shall be given to the local exchange telephone company serving the area proposed to be affected by the proposal and to any other persons designated by the Commission. The Commission may grant any such petition upon finding that the public interest is thereby served.
- § 3. These shared tenant service Rules shall apply only to those shared tenant service systems sharing more than 16 access lines or more than 32 stations. Sharing of smaller systems shall not be prohibited by local exchange companies, and shall be governed by Joint User Tariffs where in effect.
- § 4. Local exchange companies providing service to shared tenant service providers may charge for the resale of local business service based upon the number of calls to the extent permitted by the terms of Virginia Code § 56-241.2 (1986). Nothing in these shared tenant service rules shall be construed to authorize or to preclude treatment by local exchange companies of shared tenant service providers as a separate class of customers for the purpose of establishing rates and regulations of service. Where tariffs providing for such charges based on the number of calls are not in effect at the time service is applied for, local exchange companies shall provide service to shared tenant service providers for the resale of local business service at the flat rates that apply to other business PEX customers.
- § 5. Shared tenant service shall not be offered to the general public other than the offering of properly tariffed coin service.

State Corporation Commission

- § 6. Providers of shared tenant service are business customers. On behalf of their residential and business end users, such providers may subscribe to residential and business directory listings, respectively, at the rates established for such additional listings by the local exchange company.
- § 7. Local exchange companies shall have both the right and the obligation to serve any requesting subscriber located within their certificated service territory.
- § 8. Any end user within a shared tenant service building or facility has the right to subscribe to service directly from the certificated local exchange company.
- § 9. Providers of shared tenant service need not partition switches to allocate trunks among tenants or subscribers.
- § 10. Shared tenant service providers receiving service under joint user tariffs of local exchange companies as of the effective date of these rules may continue to receive such joint user service at those existing locations as long as each such location remains with that same provider.
- § 11. All rates and charges in connection with shared tenant service and all repairs and rearrangements behind the minimum point of penetration of the local exchange company's facilities or behind the interface between company owned and customer owned equipment and including the shared tenant service provider's switch will be the responsibility of the person owning or controlling the facilities behind such minimum point of penetration or interface and are not regulated by the Virginia State Corporation Commission.

ATTACHMENT B

Fairchild Communications Network and Services Company
c/o Stuart G. Meister, Vice President
Law and Administration
P.O. Box 10804
Chantilly, Virginia 22021-9998

GT Realty and Management
c/o Victor J. Toth, Esquire
2719 Soapstone Drive
Reston, Virginia 22091

Honeywell, Inc.
c/o Randall B. Lowe, Esquire
Thomas K. Crowe, Esquire
1250 Eye Street, N.W.
Washington, D.C. 20005

Millard F. Ottman, Jr., Esquire
8111 Gatehouse Road, Suite 409
Falls Church, Virginia 22042

Planning Research Corporation
c/o John D. Daly, Manager
PRC Telecommunications
1500 Planning Research Drive
McLean, Virginia 22102

Real Estate Communications Company
c/o Joseph Gensheimer, Esquire
8280 Greensboro Drive
McLean, Virginia 22102

Andrew D. Lipman, Esquire
Jean L. Kiddoo, Esquire
1777 F Street, N.W.
Washington, D.C. 20006

Multi-Tenant Telecommunications Association
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Counsel for Real Com
F. Thomas Tuttle, Esquire
1300 19th Street, N.W., Suite 300
Washington, D.C. 20036

IBM
Mareen Flanagan, Regional Manager
State Government Relations
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006

ATTACHMENT C

TELEPHONE COMPANIES IN VIRGINIA

Joseph E. Hicks, President
Amelia Telephone Company
P.O. Box 158
Leesburg, Alabama 35883

Raymond L. Eckels, Manager
Amelia Telephone Company
P.O. Box 76
Amelia, Virginia 23002

M. Dale Tetterton, Jr., Manager
Buggs Island Telephone Cooperative
P.O. Box 129
Bracey, Virginia 23019

Sue B. Moss, President
Burke's Garden Telephone Exchange
P.O. Box 428
Burke's Garden, Virginia 24608

James D. Ogg
Vice President & Division Manager
Central Telephone Company of Virginia
P.O. Box 6788
Charlottesville, Virginia 22906

State Corporation Commission

Hugh R. Stallard, Vice President
Chesapeake and Potomac Telephone Company
703 East Grace Street
Richmond, Virginia 23219

James R. Newell, Manager
Citizens Telephone Cooperative
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Robert S. Yeago, President
Clifton Forge-Waynesboro Telephone Company
P.O. Box 2008
Staunton, Virginia 24401

Harold Marshall, President
Continental Telephone Company of Virginia
P.O. Box 800
Mechanicsville, Virginia 23111

Dennis R. Williams, General Manager
General Telephone Company of Southeast
210 Bland Street
Bluefield, West Virginia 24701

L. Ronald Smith, General Manager
Mountain Grove-Williamsville Telephone Company
P.O. Box 105
Williamsville, Virginia 24487

T. A. Glover, Manager
Highland Telephone Cooperative
Monterey, Virginia 24465

K. L. Chapman, Jr., President
New Hope Telephone Company
P.O. Box 38
New Hope, Virginia 24469

W. Richard Fleming, Manager
North River Telephone Cooperative
P.O. Box 8
Dayton, Virginia 22821

Ross E. Martin, General Manager
Pembroke Telephone Cooperative
P.O. Box 85
Pembroke, Virginia 24136

E. B. Fitzgerald, Jr., President and General Manager
Peoples Mutual Telephone Company, Inc.
P.O. Box 367
Gretna, Virginia 24557

Ira D. Layman, Jr., President
Roanoke and Botetourt Telephone Company
Daleville, Virginia 24083

James W. McConnell, Manager
Scott County Telephone Cooperative

P.O. Box 487
Gate City, Virginia 24251

Warren B. French, Jr.,
President and General Manager
Shenandoah Telephone Company
P.O. Box 459
Edinburg, Virginia 22824

W. W. Hill, President
United Inter-Mountain Telephone Company
112 Sixth Street
P.O. Box 699
Bristol, Tennessee 37620

W. Dan Reichartz, President
Virginia Hot Springs Telephone Co., Inc.
Hot Springs, Virginia 24445

Ralph L. Frye, Executive Director
Virginia Exchange Carrier Association
700 Building, 14th Floor
7th and Main Streets
Richmond, Virginia 23219
telephone 643-0688

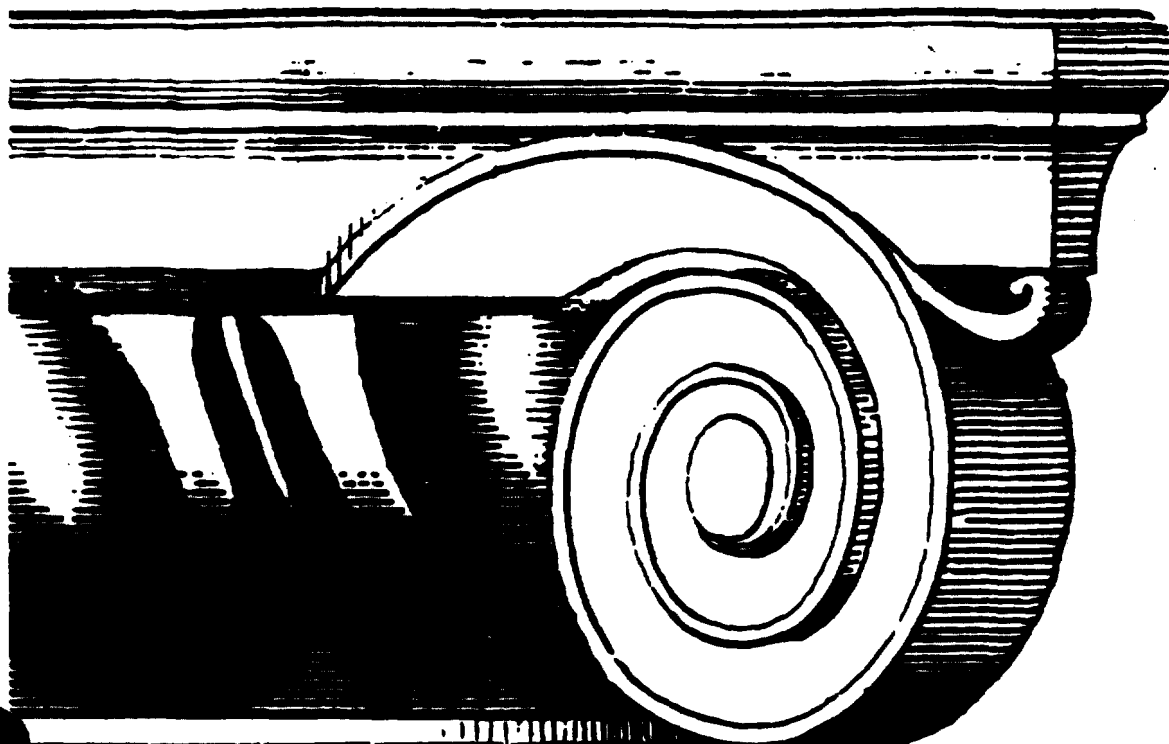
A. J. Chisholm, Vice President and Regulatory Affairs
The Western Union Telegraph Company
1528 L Street, N.W., Suite 1001
Washington, D.C. 20036

Exhibit G

THE VIRGINIA REGIST^r

OF REGULATION

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JULY 10, 1995

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Pages 3329 Through 3674

STATE CORPORATION COMMISSION

PROPOSED REGULATIONS

Division of Communications

Title of Regulation: Rules Governing the Offering of Competitive Local Exchange Telephone Service (PUC950018).

Statutory Authority: §§ 12.1-13 and 56-265.4:4 of the Code of Virginia.

AT RICHMOND, JUNE 9, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. PUC950018
investigating local exchange
telephone competition, including
adopting rules pursuant to
Va. Code § 56-265.4:4.C.3

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

The 1995 session of the Virginia General Assembly amended the Utility Facilities Act (§§ 56-265.1 through 56-265.9 of the Code of Virginia) to add a new subsection, C., to § 56-265.4:4. In addition, a new section, § 56-481.2, was enacted. See 1995 Acts of Assembly Ch. 187. Both of these provisions will take effect July 1, 1995.

Section 56-265.4:4.C.3. states:

The Commission shall promulgate rules necessary to implement this subsection. These rules shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the applicant and incumbent local exchange telephone company so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) require that the Commission determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services.

In order to carry out the mandate of § 56-265.4:4.C.3., the Commission directed its Staff to draft a set of proposed local exchange competition rules. The draft rules are attached hereto as Appendix A. Attached as Appendix B are questions that also should be addressed regarding the offering of competitive local exchange telephone service.

The Commission invites interested parties to file written comments concerning the draft rules and questions and to propose any additions, modifications, or deletions which are desired. Interested parties may request a hearing before the Commission. Accordingly,

IT IS THEREFORE ORDERED:

(1) That this matter is docketed and assigned Case No. PUC950018;

(2) That, on or before June 22, 1995, the Division of Communications shall complete publication of the following notice, to be published as a classified advertisement in major newspapers of general circulation throughout the Commonwealth:

NOTICE OF CONSIDERATION BY THE VIRGINIA STATE CORPORATION COMMISSION OF PROPOSED RULES GOVERNING THE OFFERING OF COMPETITIVE LOCAL EXCHANGE TELEPHONE SERVICE CASE NO. PUC950018

The State Corporation Commission ("Commission") is considering rules governing the offering of competitive local exchange telephone service pursuant to the provisions of Va. Code § 56-265.4:4.C.3. enacted by the 1995 session of the Virginia General Assembly.

The Commission issued an order prescribing notice and inviting comments concerning a draft set of rules which is attached to that order as Appendix A. Comments are also invited concerning a list of questions which is Appendix B to that order.

The Commission's Order Prescribing Notice and Inviting Comments, together with the draft rules and a list of questions, may be reviewed by the public at the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, Monday through Friday 8:15 a.m. to 5:00 p.m. Copies may be requested by writing the Division of Communications at P. O. Box 1197, Richmond, Virginia 23209, or by calling (804) 371-9420.

Interested persons shall submit an original and five (5) copies of written comments or requests for hearing concerning the draft rules on or before August 4, 1995. All comments and requests shall be filed with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23216, and shall refer to Case No. PUC950018. Interested persons may contact the Division of Communications at (804) 371-9420 to obtain more information about the draft rules.

If no request for hearing on the proposed rules is received, the Commission may act on these proposed rules, together with any filed comments, without convening a hearing. Interested persons should be advised that after considering any comments filed herein and after any other proceedings as the Commission may direct, the Commission may adopt, reject, or alter the proposed rules in whole or in part.

VIRGINIA STATE CORPORATION COMMISSION

State Corporation Commission

(3) That, on or before June 22, 1995, a copy of this Order and the Appendices shall also be made available for public inspection in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. until 5:00 p.m. Monday through Friday. Interested parties may also request a copy from the Division of Communications, P. O. Box 1197, Richmond, Virginia 23209, or by calling (804) 371-9420;

(4) That, on or before August 4, 1995, any interested person shall file an original and five (5) copies of written comments concerning the draft rules set out in Appendix A and addressing the questions set out in Appendix B to this Order. All written comments shall be filed with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23216, and shall refer to Case No. PUC950018;

(5) That if no request for hearing is received, the Commission may consider the proposed rules, together with any filed comments, without convening a hearing in this proceeding;

(6) That this Order and Appendices A and B shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register; and

(7) That, on or before August 4, 1995, the Division of Communications shall file with the Clerk of the Commission proof of publication of the notice prescribed herein.

AN ATTESTED COPY of this Order, including the Appendices, shall be sent by the Clerk of the Commission to: local exchange telephone companies as set out in Attachment 1 hereto; all Virginia certificated interexchange carriers as set out in Attachment 2 hereto; Edward L. Petrini, Senior Assistant Attorney General, Office of Attorney General, Division of Consumer Counsel, 900 East Main Street, Richmond, Virginia 23219; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; James C. Roberts, Esquire, and Donald G. Owens, Esquire, Virginia Cable Television Association, Mays & Valentine, P. O. Box 1122, Richmond, Virginia 23208; Louis R. Monacell, Esquire, and Alexander F. Skirpan, Esquire, Christian, Barton, Epps, Brent & Chapell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; Ronald B. Mallard, Director, Fairfax County Department of Consumer Affairs, 12000 Government Center Parkway, Suite 433, Fairfax, Virginia 22035; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, Economics and Finance, and Public Service Taxation.

Rules Governing the Offering of Competitive Local Exchange Telephone Service (PUC950018).

APPENDIX A

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Competing local exchange carriers" means all certificated providers of local exchange telephone service, whether incumbents or new entrants.

"Incumbent local exchange telephone company" means a public service company providing local exchange telephone service in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity.

"Interconnection" means the point of interface between competing local exchange carriers' networks. Interconnection can be achieved at different points of the network.

"Interim number portability" means the service provided in lieu of true number portability by the incumbent local exchange telephone company. Interim solutions include remote call forwarding and direct inward dialing, which enable customers to change providers without the appearance of changing telephone numbers, but rely on the incumbent's network to process all calls.

"Mutual exchange of traffic" means the reciprocal arrangement by which a competing local exchange carrier terminates the local calls of its competitor's customers on its network in exchange for the completion of its customers' calls on the competitor's network.

"New entrant" means an entity certificated to provide local exchange telephone service in Virginia after January 1, 1996, under § 56-265.4:4 of the Code of Virginia.

"Terminating compensation" means the payment or other exchange mechanism (e.g., bill and keep) designed to recover the expense for terminating local exchange traffic of competing local exchange carriers.

"True number portability" means the technical capability of a competing local exchange carrier to allow customers to retain their telephone number when they change providers (without a change in location) without reliance on calls being routed through the incumbent's end office where the original NXX is assigned.

"Unbundling" means the process by which a local exchange telephone carrier's network is disaggregated into functional components.

§ 2. Certification requirements.

The certification requirements for local competition are provided in subdivisions 1 through 7 below:

1. An original and 15 copies of applications for certificates of public convenience and necessity shall be filed with the Clerk of the State Corporation Commission.

2. Notice of the application shall be given to all competing local exchange companies in the applicant's proposed serving territory. Each applicant shall publish notice in newspapers having general circulation in the requested service area in a form to be prescribed by the commission.

3. The applicant shall submit information which identifies the applicant including (i) its name, address, and telephone number; (ii) its corporate ownership; (iii) the

name, address, and telephone number of its corporate parent or parents, if any; (iv) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals and their directors if the principals are corporations; and (v) the names, addresses, and telephone numbers of its legal counsel.

4. Each incorporated applicant for a certificate shall demonstrate that it is authorized to do business in the Commonwealth of Virginia as a public service company.

5. Applicants shall be required to show their financial, managerial, and technical ability to render local exchange telephone service.

a. As a minimum requirement, a showing of financial ability shall be made by attaching the applicant's most recent stockholders annual report and its most recent SEC 10K or, if the company is not publicly traded, its most recent financial statements.

b. To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing local exchange telephone service and shall list the geographic areas in which it has been and is currently providing service. Newly-created companies shall list the experience of each principal officer in order to show its ability to provide service.

c. Technical abilities shall be indicated by a description of the applicant's experience in providing telephone services, or in the case of newly-created companies, the applicant may provide other documentation which supports its technical abilities.

6. Each application for a certificate to provide local exchange service shall include the applicant's initial tariffs, rules, regulations, terms, and conditions. Applicants who desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with § 4 of this regulation.

7. The applicant shall file maps with the application for certification in sufficient detail that designate the actual geographic area or areas to be served. Such maps should also identify the proposed initial local calling areas of the applicant.

8. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in § 4 of this regulation.

§ 3. Conditions for certification.

A. In the public interest evaluation of the applicant's request for a certificate to provide local exchange service, the commission will, at a minimum, require a new entrant, either directly or through arrangements with other carriers, to provide the following:

1. Access to 911 and E911 services;
2. White page directory listings;
3. Access to telephone relay services;
4. Access to directory assistance;

5. Access to operator services;

6. Equal access to interLATA long distance carriers;

7. Compliance with applicable commission service and billing standards or rules;

8. Free blocking of 900- and 700-type services;

9. Interconnection on a nondiscriminatory basis with other local exchange telephone service providers;

10. At a minimum, the applicable intraLATA access requirements of incumbent local exchange telephone companies as determined in PUC850035.

B. To the extent feasible, the new entrant should be willing and able to provide service to all customers in the same service classification in its designated geographic service area in accordance with its tariff offerings.

C. The commission may, in the public interest, attach or waive any conditions or exceptions to these rules that it finds appropriate to any certificate issued under § 56-265.4:4 C of the Code of Virginia.

§ 4. Regulation of new entrants providing local exchange telephone service.

A. Unless otherwise allowed by the commission, tariffs are required for all service offerings with the exception of those which are determined to be comparable to "competitive" offerings of the incumbent telephone company which do not require tariffs.

B. The new entrant may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings.

C. Unless otherwise allowed by the commission, prices for local exchange services provided by the new entrant shall not exceed those of the comparable tariffed services provided by the incumbent local exchange carrier or carriers in the same local serving areas. Tariff changes within this price ceiling plan shall be implemented as follows:

1. Price decreases shall become effective on one-day notice to the commission.

2. Price increases below ceiling rates shall become effective after 30 days notice is provided to customers through billing inserts or publication for two consecutive weeks as display advertising in newspapers having general circulation in the areas served by the new entrant.

3. Price ceilings are the tariffed rates for comparable services of the incumbent local exchange telephone companies as of January 1, 1996. Price ceilings will be increased as an incumbent's prices are raised through applicable regulatory procedures. Unless otherwise determined by the commission, price decreases for an incumbent's service whether initiated by the carrier or adopted by the commission will not require a corresponding decrease in the price ceilings applicable to the new entrant.

State Corporation Commission

4. A pricing structure or proposed rates of a new entrant's local exchange service(s) that do not conform with the established price ceilings may be permitted subject to commission approval.

5. These pricing requirements do not apply to a new entrant's services which are determined by the commission to be comparable to services classified as competitive for the incumbent.

D. A new entrant may submit an alternative regulatory plan to that described in this section for the commission's consideration in the applicant's certification proceeding or at a later date.

E. No form of earnings regulation will be required for the regulation of new entrants. However, new entrants will be required to file financial and other reports as identified in § 5 of this regulation to enable the commission to evaluate the effectiveness of local exchange telephone competition.

F. No new entrant providing local exchange telephone service shall abandon or discontinue service except with the approval of the commission, and upon such terms and conditions as the commission may prescribe.

G. Should the commission ever determine that this form of regulation of new entrants does not effectively, or is no longer necessary to, regulate the prices of their services, it may, pursuant to § 56-481.2 of the Code of Virginia, modify the form of regulation.

§ 5. Financial and reporting requirements for new entrants.

A. All providers of local exchange telephone service certificated under this regulation shall be required to file the following reports with the Division of Economics and Finance, unless specified otherwise:

1. Annual report on the number of access lines by local exchange area and classified by residential and business lines.

2. Annual price list for all detariffed competitive telephone services provided by the applicant.

3. Quarterly statement of units and revenues for all competitive telephone services provided by the applicant.

4. Stockholders annual report for the parent company and the applicant, if available. Otherwise, an auditor's annual report. The SEC Form 10-K and FCC Form M for the parent and applicant should also be attached, if available.

5. Reports and information required by the Division of Public Service Taxation in performing its functions per §§ 58.1-2600 through 58.1-2690 of the Code of Virginia. This information is to be filed with the Division of Public Service Taxation.

B. A new entrant is required to remit the telecommunications relay surcharge amount to the commission per the October 5, 1990, final order issued in Case No. PUC900029. The remittance, along with any other

required information, should be made to the commission's Division of Public Service Taxation.

C. Any expansion or reduction of the geographic service area of a new entrant shall require the filing of amended maps with the Division of Communications.

D. Upon the request of the staff, any new entrant will file such other information with respect to any of its services or practices as may be required of public service companies under current Virginia law, or any amendments thereto. If any new entrant fails to provide data required by the staff, it may be penalized for a violation of a commission order.

E. A new entrant, when it is determined by the commission to have a monopoly over any of its services, whether or not those services are telephone services, shall file annual data to demonstrate that its revenues from local exchange telephone services cover their long run incremental costs in the aggregate.

§ 6. Interconnection.

The commission recognizes that interconnection of local exchange networks between and among new entrants and incumbent local exchange telephone companies is necessary and vital to the development of competitive local exchange markets. The following requirements will apply:

1. Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis requested by a competing local exchange carrier to provide quality service. The commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.

2. Interconnection arrangements should apply equally and on a nondiscriminatory basis to all competing local exchange carriers.

3. Interconnection arrangements must be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any provider to another carrier will be allowed.

4. Competing local exchange telephone companies must provide nondiscriminatory use, on a tariffed basis, of pole attachments, conduit space, and rights-of-way.

5. Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed within 30 days of the conclusion of negotiations and reviewed by the commission to determine if they are reasonable and nondiscriminatory.

6. Negotiations for interconnection arrangements should be completed within 90 days of a bona fide request. After a minimum of 45 days of the initial interconnection request, any affected party may petition the commission for a hearing in lieu of negotiations or as a result of unsuccessful negotiations to establish tariffed prices and service arrangements for interconnection.

7. Unbundled functional elements of a local exchange telephone company's network that are made available through interconnection agreements should also be

made available on an individual tariffed basis within 60 days of commission review of any interconnection arrangement.

§ 7. Terminating traffic compensation.

The mutual exchange of local traffic between competing local exchange carriers is necessary in a competitive market to provide for continued ubiquitous calling for all telecommunications users in the Commonwealth. The following requirements will apply:

1. Any compensation arrangement for the mutual exchange of local traffic should reflect the reciprocal relationship between competing local exchange carriers and the development of local exchange competition.
2. The commission encourages good faith negotiations between competing local exchange carriers on terminating compensation arrangements. The commission may establish at any time, upon application or its own motion, appropriate compensation levels for mutual exchange of local traffic if negotiations are unsuccessful or any arrangements are found to be unreasonable or discriminatory.
3. Any compensation arrangement for the mutual exchange of local traffic will conform to the established local calling areas of the incumbent local exchange telephone companies. The new entrants may only deliver this local traffic for termination on the incumbent's local network at the compensation level established in conformance with this regulation.
4. Any compensation arrangements for the mutual exchange of local traffic shall provide for equal treatment or rates between the competing local exchange carriers.

§ 8. Number portability and number assignment.

The availability of local number portability will be a critical element in promoting competition and assessing the potential for competition in the local exchange market. The following requirements will apply:

1. Consumers shall have the ability to retain the same telephone number if they do not change locations, regardless of their chosen local exchange carrier.
2. True number portability shall be made available when technically feasible. In the near term, the commission will rely on national and industry efforts to establish appropriate standards and resolve implementation issues.
3. Interim number portability arrangements shall be utilized until true number portability is available. The parties shall include interim number portability issues in initial interconnection negotiations.
4. To the extent feasible, the incumbent local telephone company shall provide new entrants with reservations for a reasonably sufficient block of numbers for their use.

§ 9. Universal service.

The goals of universal service and affordability of basic local exchange telephone service need to be maintained in a

competitive local exchange environment for the citizens of Virginia. The following requirements shall apply:

1. The commission may, if necessary, establish a Universal Service Fund and applicable payment mechanism. Any such fund shall require the participation and support of all competing local exchange carriers.
2. The establishment of a Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone service and the calculation of the subsidy required to support the ubiquity of such service.
3. The incumbent local exchange companies shall be designated as the carriers of last resort in their current local serving areas until such time as the commission determines otherwise.

APPENDIX B

QUESTIONS

LOCAL EXCHANGE TELEPHONE COMPETITION

The Commission requests interested parties to respond to these questions and fully explain all answers and comments.

1. Is local exchange competition in the public interest at this time? What should the commission consider in evaluating the public interest objectives established in § 58-285.4:4 C 1? Is an overall public interest finding on local exchange competition sufficient, or will any such finding be required for the granting of each applicant's certificate?
2. Should new entrants be required to provide service to all customers in their serving area, or is there some feasible minimum standard (e.g., abut facilities, reasonable access to customer's premises, availability of construction charges, access to unbundled loops, etc.)?
3. How should the provision of white page directories be handled in a competitive environment? Should the incumbent be required to provide listings to new entrants and books to their customers? If so, at what cost?
4. Should the incumbent local exchange company be required to provide access to databases, signaling systems, E-911 facilities, or other such platforms/facilities?
5. What problems may arise if new entrants do not have the same local calling areas of the incumbent local exchange telephone company?
6. The draft rules do not currently provide for resale of existing tariffed local exchange services of incumbent local exchange telephone companies. Should competing local exchange carriers be required to make their local services available for resale? Should there be limitations on such resale (e.g., usage based services only, business services only)? Should wholesale offerings be required?
7. Should the Shared Tenant Service rules established in Case No. PUC850036 be amended with the advent of local exchange competition? If so, how? Will shared tenant providers need to be certificated as new entrants?